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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON CHRIST,

Plaintiff,

No. CIV S-10-0760 EFB P

vs.

R. BLACKWELL, et al.,

Defendants.

ORDER DIRECTING THE FILING OF  
PRETRIAL STATEMENTS

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action under 42 U.S.C. § 1983. Pursuant to the October 7, 2010 scheduling order, any dispositive motions were to be filed not later than April 22, 2011. No motions for summary judgment have been filed. Accordingly, the court will now set the matter for pretrial conference and the trial date will be reset in the forthcoming pretrial order.

Plaintiff is advised that failure to comply with the procedures set forth below may result in the preclusion of any and all witnesses named in his pretrial statement.

At the trial of this case, plaintiff must be prepared to introduce evidence to prove each of the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of trial evidence: (1) exhibits and (2) the testimony of witnesses. It is plaintiff's responsibility to produce all of the evidence to prove his case, whether that evidence is in the

1 form of exhibits or witness testimony. If plaintiff wants to call witnesses to testify, he must  
2 follow certain procedures to ensure that the witnesses will be at the trial and available to testify.

3 I. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to  
4 Testify Voluntarily

5 An incarcerated witness who agrees voluntarily to attend trial to give testimony  
6 cannot come to court unless this court orders the warden or other custodian to permit the witness  
7 to be transported to court. This court will not issue such an order unless it is satisfied that:

8 1. The prospective witness is willing to attend;

9 and

10 2. The prospective witness has actual knowledge of relevant facts.

11 With the pretrial statement, a party intending to introduce the testimony of  
12 incarcerated witnesses who have agreed voluntarily to attend the trial must serve and file a  
13 written motion for a court order requiring that such witnesses be brought to court at the time of  
14 trial. The motion must:

15 1. State the name, CDC Identification number, and address of each such  
16 witness;

17 and

18 2. Be accompanied by affidavits showing that each witness is willing to  
19 testify and that each witness has actual knowledge of relevant facts.

20 The willingness of the prospective witness can be shown in one of two ways:

21 1. The party himself can swear by affidavit that the prospective witness  
22 has informed the party that he or she is willing to testify voluntarily  
23 without being subpoenaed. The party must state in the affidavit when and  
24 where the prospective witness informed the party of this willingness; or

25 2. The party can serve and file an affidavit sworn to by the prospective  
26 witness, in which the witness states that he or she is willing to testify

1 without being subpoenaed.

2 The prospective witness' actual knowledge of relevant facts can be shown in one  
3 of two ways:

4 1. The party himself can swear by affidavit that the prospective witness  
5 has actual knowledge. However, this can be done only if the party has  
6 actual firsthand knowledge that the prospective witness was an eyewitness  
7 or an ear-witness to the relevant facts. For example, if an incident  
8 occurred in the plaintiff's cell and, at the time, the plaintiff saw that a  
9 cellmate was present and observed the incident, the plaintiff may swear to  
10 the cellmate's ability to testify.

11 Or

12 2. The party can serve and file an affidavit sworn to by the prospective  
13 witness in which the witness describes the relevant facts to which the  
14 prospective witness was an eye- or ear-witness. Whether the affidavit is  
15 made by the plaintiff or by the prospective witness, it must be specific  
16 about what the incident was, when and where it occurred, who was  
17 present, and how the prospective witness happened to be in a position to  
18 see or to hear what occurred at the time it occurred.

19 The court will review and rule on the motion for attendance of incarcerated  
20 witnesses, specifying which prospective witnesses must be brought to court. Subsequently, the  
21 court will issue the order necessary to cause the witness' custodian to bring the witness to court.

22 II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who  
23 Refuse to Testify Voluntarily

24 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to  
25 testify voluntarily, the party should submit with his pretrial statement a motion for the attendance  
26 of such witnesses. Such motion should be in the form described above. In addition, the party

1 must indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

2 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who  
3 Agree to Testify Voluntarily

4 It is the responsibility of the party who has secured an unincarcerated witness'  
5 voluntary attendance to notify the witness of the time and date of trial. No action need be sought  
6 or obtained from the court.

7 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who  
8 Refuse to Testify Voluntarily

9 If a prospective witness is not incarcerated, and he or she refuses to testify  
10 voluntarily, not earlier than four weeks and not later than two weeks before trial, the party must  
11 prepare and submit to the United States Marshal a subpoena for service by the Marshal upon the  
12 witness. (Blank subpoena forms may be obtained from the Clerk of the Court.) Also, the party  
13 seeking the witness's presence must tender an appropriate sum of money to the witness through  
14 the United States Marshal. In the case of an unincarcerated witness, the appropriate sum of  
15 money is the daily witness fee of \$40.00 plus the witness's travel expenses.

16 A subpoena will not be served by the United States Marshal upon an unincarcerated  
17 witness unless the subpoena is accompanied by a money order made payable to the witness for  
18 the full amount of the witness's travel expenses plus the daily witness fee of \$40.00, and a copy  
19 of the court's order granting plaintiff *in forma pauperis* status. Because no statute authorizes the  
20 use of public funds for these expenses in civil cases, the tendering of witness fees and travel  
21 expenses is required even if the party was granted leave to proceed *in forma pauperis*.

22 In accordance with the above, IT IS HEREBY ORDERED that:

23 1. Plaintiff shall file and serve his pretrial statement and any motions necessary to  
24 obtain the attendance of witnesses at trial within thirty (30) days. Plaintiff is advised that failure  
25 to file a pretrial statement may result in the imposition of sanctions, including dismissal of this  
26 action.

1           2. Defendants shall file their pretrial statement not later than fourteen (14) days after the  
2 filing of plaintiff's pretrial statement.

3           3. Pretrial conference (as described in Local Rule 282) will be conducted on the file  
4 only, without appearance by either party.

5           4. The date for jury trial will be set in the pretrial order.

6 DATED: September 7, 2011.

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9 EDMUND F. BRENNAN  
10 UNITED STATES MAGISTRATE JUDGE  
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